



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2012 REGULAR SESSION

HOUSE BILL NO. 54

AS ENACTED

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adair

1 AN ACT relating to the criminal justice system.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔ Section 1. KRS 431.066 is amended to read as follows:

4 (1) *For purposes of this section, "verified and eligible defendant" means a defendant*
 5 *who pretrial services is able to interview and assess, and whose identity pretrial*
 6 *services is able to confirm through investigation.*

7 (2) When a court considers pretrial release and bail for an arrested defendant, the court
 8 shall consider whether the defendant constitutes a flight risk, is unlikely to appear
 9 for trial, or is likely to be a danger to the public if released. *In making this*
 10 *determination, the court shall consider the pretrial risk assessment for a verified*
 11 *and eligible defendant along with the factors set forth in KRS 431.525.*

12 (3) If *a verified and eligible* defendant poses low risk of flight, is likely to
 13 appear for trial, and is not likely to be a danger to others, the court shall order the
 14 defendant released on unsecured bond or on the defendant's own recognizance
 15 subject to such other conditions as the court may order.

16 (4) If *a verified and eligible* defendant poses a moderate risk of flight, has a
 17 moderate risk of not appearing for trial, or poses a moderate risk of danger to others,
 18 the court shall release the defendant under the same conditions as in subsection
 19 (3) of this section but shall consider ordering the defendant to participate in
 20 global positioning system monitoring, controlled substance testing, increased
 21 supervision, or such other conditions as the court may order.

22 (5) (a) Except as provided in paragraph (b) of this subsection, regardless of the
 23 amount of the bail set, the court shall permit the defendant a credit of one
 24 hundred dollars (\$100) per day as a payment toward the amount of the bail set
 25 for each day or portion of a day that the defendant remains in jail prior to trial.
 26 Upon the service of sufficient days in jail to have sufficient credit to satisfy
 27 the bail, ~~the court shall order~~ the defendant *shall be* released from jail on the

conditions specified in this section or in this chapter.

(b) The provisions of paragraph (a) of this subsection shall not apply to:

1. Any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, KRS 529.100 involving commercial sexual activity, KRS 530.020, 530.064(1)(a), 531.310, or 531.320, or who is a violent offender as defined in KRS 439.3401; or
2. A defendant who is found by the court to present a flight risk or to be a danger to others.

(c) For purposes of this subsection, "a day or portion of a day" means any time spent in a detention facility following booking.

(d) A defendant shall not earn credit pursuant to paragraph (a) of this subsection while also earning credit pursuant to KRS 534.070.

~~(6)~~~~(5)~~ If a court determines that a defendant shall not be released pursuant to subsection ~~(5)~~~~(4)~~ of this section, the court shall document the reasons for denying the release in a written order.

~~(7)~~~~(6)~~ The jailer shall be responsible for tracking the credit earned by a defendant pursuant to subsection ~~(5)~~~~(4)~~ of this section.

➔Section 2. KRS 431.520 is amended to read as follows:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme Court as provided by KRS 431.540, unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required, or the court determines the person is a flight risk or a danger to others. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following conditions of release:

- (1) Place the person in the custody of a designated person or organization agreeing to

- 1 supervise him;
- 2 (2) Place restrictions on the travel, association, or place of abode of the person during
- 3 the period of release;
- 4 (3) Require the execution of a bail bond:
- 5 (a) With sufficient personal surety or sureties acceptable to the court; in
- 6 determining the sufficiency of such surety, or sureties, the court shall consider
- 7 his character, his place of residence, his relationship with the defendant, and
- 8 his financial and employment circumstances; or
- 9 (b) With the ten percent (10%) deposit as provided in KRS 431.530; provided
- 10 that if the defendant is permitted to earn credit toward bail pursuant to
- 11 Section 1 of this Act, that credit shall be applied to the ten percent (10%)
- 12 deposit; or
- 13 (c) With the deposit of cash equal to the amount of the bond or in lieu thereof
- 14 acceptable security as provided in KRS 431.535;
- 15 (4) If the person's record indicates a history of controlled substance or alcohol abuse,
- 16 order the person to submit to periodic testing for use of controlled substances or
- 17 alcohol and pay a reasonable fee, not to exceed the actual cost of the test and
- 18 analysis, as determined by the court with the fee to be collected by the circuit clerk,
- 19 held in an agency account, and disbursed, on court order, solely to the agency or
- 20 agencies responsible for testing and analysis as compensation for the cost of the
- 21 testing and analysis performed under this subsection. If the person is declared
- 22 indigent, the testing fee may be waived by the court. The Administrative Office of
- 23 the Courts shall establish pilot projects to implement the provisions of this
- 24 subsection;
- 25 (5) (a) During all or part of a person's period of release pursuant to this section, order
- 26 the person to participate in a global positioning monitoring system program
- 27 operated by a county pursuant to KRS 67.372 and 67.374 under the same

- 1 terms and conditions provided under KRS 431.517.
- 2 (b) If the person is charged with a sex crime as defined in KRS 17.500, consider
3 requiring that he or she be monitored electronically, and shall consider
4 requiring the person be subject to home incarceration;
- 5 (6) Impose any other condition deemed reasonably necessary to assure appearance as
6 required, including a condition requiring that the person return to custody after
7 specified hours;
- 8 (7) A court authorizing the release of a person pursuant to this section shall cause the
9 issuance of an appropriate order containing a statement of the conditions imposed,
10 if any, shall cause such person to be informed of the penalties applicable to
11 violations of the conditions of his release, and shall cause him to be informed that a
12 warrant for his arrest will be issued immediately upon any such violation;
- 13 (8) A person for whom conditions of release are imposed and who after twenty-four
14 (24) hours from the time of the imposition of said conditions continues to be
15 detained as a result of his inability to meet the conditions of release shall, upon
16 written application or upon the court's own motion, be entitled to have the
17 conditions reviewed by the court which imposed them. A person who is ordered
18 released on a condition which requires that he return to custody after specified hours
19 shall, upon written application or upon the court's own motion, be entitled to a
20 review by the court which imposed the condition;
- 21 (9) If at any time following release of a defendant and before he is required to appear
22 for trial, the court is advised of a material change in the defendant's circumstances
23 or that he has not complied with all conditions imposed upon his release, the court
24 having jurisdiction may:
- 25 (a) Order the arrest of the defendant;
- 26 (b) Enter an order requiring the defendant, his surety or sureties to appear and
27 show cause why the bail bond should not be forfeited or the conditions of his

1 release be changed; or

2 (c) Both.

3 A copy of said order shall be served upon the defendant, his surety or sureties. If the
4 defendant fails to appear before the court as ordered or if, after hearing, the court
5 finds the conditions of release have not been complied with, the court may change
6 the conditions imposed or forfeit the bail bond or any portion thereof and enter a
7 judgment for the Commonwealth against the defendant and his surety or sureties for
8 the amount of the bail bond or any portion thereof and cost of the proceedings.

9 ➔ Section 3. KRS 431.530 is amended to read as follows:

10 (1) Any person who has been permitted to execute a bail bond in accordance with KRS
11 431.520(3)(b) shall deposit with the clerk of the court before which the action is
12 pending a sum of money equal to ten percent (10%) of the bail, but in no event shall
13 such deposit be less than ten dollars (\$10) unless the defendant earned full credit
14 toward the applicable amount of bail pursuant to Section 1 of this Act, in which
15 case the defendant shall not be required to make a deposit with the clerk of the
16 court.

17 (2) Upon depositing said sum the defendant shall be released from custody subject to
18 all conditions of release imposed by the court.

19 (3) Except as provided in subsection (5) of this section, if the conditions of release have
20 been performed and the defendant has been discharged from all obligations in the
21 action the clerk of the court shall return to the defendant, unless the court orders
22 otherwise, ninety percent (90%) of the sum deposited and shall retain as bail costs
23 ten percent (10%) of the amount deposited; provided, however, in no event shall the
24 amount retained by the clerk as bail costs be less than five dollars (\$5). It is further
25 provided that the court shall order the clerk of court to pay into the public advocate
26 special account any amount of the sum deposited by the defendant, in excess of bail
27 costs, which in its sound discretion represents a reasonable fee for any public

1 advocate legal or investigative services provided for the defendant under KRS
 2 Chapter 31, but in no event shall the amount so paid to the public advocate special
 3 account as public advocate legal and investigative fees be less than five dollars (\$5)
 4 per case. At the request of the defendant the court may order the amount repayable
 5 to defendant from such deposit to be paid to defendant's attorney of record.

6 (4) Except as provided in subsection (5) of this section, if a final judgment for a fine
 7 and court costs or either is entered in the prosecution of an action in which a deposit
 8 has been made in accordance with subsection (1) of this section, the balance of such
 9 deposit, after deduction of bail costs and public advocate fees as provided for in
 10 subsection (3) of this section, shall be applied to the satisfaction of the judgment.

11 (5) If the defendant has performed all conditions of release and if the defendant is
 12 found not guilty of the offense for which bail was posted, or if all charges against
 13 him relating to the offense for which bail was posted are dropped or dismissed, then
 14 all bail money deposited by the defendant or by another person on his behalf shall
 15 be returned to him with no deductions therefrom as provided in subsection (3) or (4)
 16 of this section.

17 ➔Section 4. KRS 534.060 is amended to read as follows:

18 (1) When an individual sentenced to pay a fine defaults in the payment of the fine or
 19 any installment, the court upon motion of the prosecuting attorney or upon its own
 20 motion may require him to show cause why he should not be imprisoned for
 21 nonpayment. The court may issue a warrant of arrest or a summons for his
 22 appearance.

23 (2) Following an order to show cause under subsection (1), unless the defendant shows
 24 that his default was not attributable to an intentional refusal to obey the sentence of
 25 the court and not attributable to a failure on his part to make a good faith effort to
 26 obtain the necessary funds for payment, the court may order the defendant
 27 imprisoned for a term not to exceed:

- 1 (a) Six (6) months, if the fine was imposed for the conviction of a felony; or
- 2 (b) One-third (1/3) of the maximum authorized term of imprisonment for the
- 3 offense committed, if the fine was imposed for conviction of a misdemeanor;
- 4 or
- 5 (c) Ten (10) days, if the fine was imposed for conviction of a violation.
- 6 (3) If the default in payment of a fine is determined to be excusable under the standards
- 7 set forth in subsection (2), the court may enter an order allowing the defendant
- 8 additional time for payment, reducing the amount of each installment, or modifying
- 9 the manner of payment in any other way. ~~[In addition the court may enter an order~~
- 10 ~~compelling the defendant to work for a department of local government, if:~~
- 11 ~~(a) Such department, through appropriate authority, approves the defendant's~~
- 12 ~~employment;~~
- 13 ~~(b) Such department will pay the defendant for his work at a reasonable rate of~~
- 14 ~~compensation;~~
- 15 ~~(c) The defendant is not otherwise gainfully employed nor medically disabled;~~
- 16 ~~and~~
- 17 ~~(d) Such employment will not cause economic hardship to the defendant or his~~
- 18 ~~dependents.~~
- 19 ~~— In the event such an order is entered the court shall designate the portion of the~~
- 20 ~~defendant's compensation that is to be credited toward payment of his fine, which in~~
- 21 ~~no event shall be more than forty percent (40%) of gross compensation.]~~
- 22 (4) When a fine is imposed on a corporation, it is the duty of the person or persons
- 23 authorized to make disbursement of the assets of the corporation and their superiors
- 24 to pay the fine from assets of the corporation. The failure of such persons to do so
- 25 shall render them subject to imprisonment under subsections (1) and (2).
- 26 (5) Following a default in the payment of a fine or any installment thereof, the fine may
- 27 be collected by any means authorized for the enforcement of money judgments

1 rendered in favor of the Commonwealth.

2 ➔Section 5. KRS 534.070 is amended to read as follows:

3 (1) A defendant who has been sentenced to jail for failure to pay a fine or court costs or
4 for failure to appear in court on a date set for the sole purpose of addressing
5 nonpayment of a fine or court costs shall receive credit against the fine and costs
6 owed for each day the defendant spends in jail at the following rates:

7 (a) Fifty dollars (\$50) per day if the defendant does not work at a community
8 service or community labor program; or

9 (b) One hundred dollars (\$100) per day if the defendant works eight (8) hours per
10 day at a community service or community labor program. If the defendant
11 works less than eight (8) hours in a community service or community labor
12 program, the defendant shall be allowed an amount of one-eighth (1/8) of the
13 one hundred dollars (\$100) for each hour worked in a community service or
14 community labor program.

15 (2) Credit against a fine or court costs earned by a defendant pursuant to this section
16 shall prohibit the collection of any part of a fine or costs which has been credited
17 pursuant to this section, and that portion of the fine or costs shall be considered
18 paid.

19 (3) The jailer shall be responsible for monitoring a defendant's community service and
20 tracking the number of days to be served to pay any outstanding fine or court costs.

21 (4) If a partial payment is made by the defendant or on behalf of a defendant, that
22 payment shall be applied first to court costs, then to fees, and then to fines
23 pursuant to KRS 23A.205 or 24A.175 prior to the application of any credit earned
24 pursuant to this section. Credit earned pursuant to this section shall not be
25 applied to restitution.

26 ➔Section 6. KRS 218A.135 is amended to read as follows:

27 (1) Any statute to the contrary notwithstanding, a defendant charged with an offense

1 under this chapter for which a conviction may result in presumptive probation shall
 2 be placed on pretrial release on his or her own recognizance or on unsecured bond
 3 by the court subject to any conditions, other than bail, specified in KRS 431.515 to
 4 431.550.

5 (2) The provisions of this section shall not apply to a defendant who is found by the
 6 court to present a flight risk[,], or to be a danger to ~~himself or herself or a danger to~~
 7 others.

8 (3) If a court determines that a defendant shall not be released pursuant to subsection
 9 (2) of this section, the court shall document the reasons for denying the release in a
 10 written order.

11 ➔ Section 7. KRS 218A.1413 is amended to read as follows:

12 (1) A person is guilty of trafficking in a controlled substance in the second degree
 13 when:

14 (a) He or she knowingly and unlawfully traffics in:

15 1. Ten (10) or more dosage units of a controlled substance classified in
 16 Schedules I and II that is not a narcotic drug; or specified in KRS
 17 218A.1412; or

18 2. Twenty (20) or more dosage units of a controlled substance classified in
 19 Schedule III; but not naphthylpyrovalerone, 3,4-
 20 methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-
 21 methylmethcathinone, synthetic cannabinoid agonists or piperazines,
 22 salvia, or marijuana;

23 (b) He or she knowingly and unlawfully prescribes, distributes, supplies, or sells
 24 an anabolic steroid for:

25 1. Enhancing human performance in an exercise, sport, or game; or

26 2. Hormonal manipulation intended to increase muscle mass, strength, or
 27 weight in the human species without a medical necessity; or

1 (c) *He or she knowingly and unlawfully traffics in* any quantity of a controlled
 2 substance specified in paragraph (a) of this subsection in an amount less than
 3 the amounts specified in that paragraph.

4 (2) (a) Except as provided in paragraph (b) of this subsection, any person who
 5 violates the provisions of subsection (1) of this section shall be guilty of a
 6 Class D felony for the first offense and a Class C felony for a second or
 7 subsequent offense.

8 (b) Any person who violates the provisions of subsection (1)(c) of this section
 9 shall be guilty of:

10 1. A Class D felony for the first offense, except that KRS Chapter 532 to
 11 the contrary notwithstanding, the maximum sentence to be imposed
 12 shall be no greater than three (3) years; and

13 2. A Class D felony for a second offense or subsequent offense.

14 ➔Section 8. KRS 218A.275 is amended to read as follows:

15 (1) A court may request the Division of Probation and Parole to perform a risk and
 16 needs assessment for any person found guilty of possession of a controlled
 17 substance pursuant to KRS 218A.1415, 218A.1416, or 218A.1417. The assessor
 18 shall make a recommendation to the court as to whether treatment is indicated by
 19 the assessment, and, if so, the most appropriate treatment or recovery program
 20 environment. If treatment is indicated for the person, the court may order him or her
 21 to the appropriate treatment or recovery program that will effectively respond to the
 22 person's level of risk, criminal risk factors, and individual characteristics as
 23 designated by the secretary of the Cabinet for Health and Family Services where a
 24 program of treatment or recovery not to exceed one (1) year in duration may be
 25 prescribed. The person ordered to the designated treatment or recovery program
 26 shall present himself or herself for registration and initiation of the treatment or
 27 recovery program within five (5) days of the date of sentencing. If, without good

1 cause, the person fails to appear at the designated treatment or recovery program
2 within the specified time, or if at any time during the program of treatment or
3 recovery prescribed, the authorized director of the treatment or recovery program
4 finds that the person is unwilling to participate in his or her treatment, the director
5 shall notify the sentencing court. Upon receipt of notification, the court shall cause
6 the person to be brought before it and may continue the order of treatment, or may
7 rescind the treatment order and impose a sentence for the possession offense. Upon
8 discharge of the person from the treatment or recovery program by the secretary of
9 the Cabinet for Health and Family Services, or his or her designee, prior to the
10 expiration of the one (1) year period or upon satisfactory completion of one (1) year
11 of treatment, the person shall be deemed finally discharged from sentence. The
12 secretary, or his or her designee, shall notify the sentencing court of the date of such
13 discharge from the treatment or recovery program.

14 (2) The secretary of the Cabinet for Health and Family Services, or his or her designee,
15 shall inform each court of the identity and location of the treatment or recovery
16 program to which the person is sentenced.

17 (3) Transportation to an inpatient facility shall be provided by order of the court when
18 the court finds the person unable to convey himself or herself to the facility within
19 five (5) days of sentencing by reason of physical infirmity or financial incapability.

20 (4) The sentencing court shall immediately notify the designated treatment or recovery
21 program of the sentence and its effective date.

22 (5) The secretary for health and family services, or his or her designee, may authorize
23 transfer of the person from the initially designated treatment or recovery program to
24 another treatment or recovery program for therapeutic purposes. The sentencing
25 court shall be notified of termination of treatment by the terminating treatment or
26 recovery program and shall be notified by the secretary of the new treatment or
27 recovery program to which the person was transferred.

- 1 (6) Responsibility for payment for treatment services rendered to persons pursuant to
2 this section shall be as under the statutes pertaining to payment of patients and
3 others for services rendered by the Cabinet for Health and Family Services, unless
4 the person and the treatment or recovery program shall arrange otherwise.
- 5 (7) None of the provisions of this section shall be deemed to preclude the court from
6 exercising its usual discretion with regard to ordering probation or conditional
7 discharge.
- 8 (8) Except as provided in subsection (12) of this section, in the case of any person who
9 has been convicted for the first time of ~~a misdemeanor~~ possession of controlled
10 substances, the court may set aside and void the conviction upon satisfactory
11 completion of treatment, probation, or other sentence, and issue to the person a
12 certificate to that effect. A conviction voided under this subsection shall not be
13 deemed a first offense for purposes of this chapter or deemed a conviction for
14 purposes of disqualifications or disabilities imposed by law upon conviction of a
15 crime. Voiding of a conviction under this subsection and dismissal may occur only
16 once with respect to any person.
- 17 (9) If the court voids a conviction under this section, the court shall order the sealing of
18 all records in the custody of the court and any records in the custody of any other
19 agency or official, including law enforcement records, except as provided in KRS
20 27A.099. The court shall order the sealing on a form provided by the Administrative
21 Office of the Courts. Every agency with records relating to the arrest, charge, or
22 other matters arising out of the arrest or charge that is ordered to seal records, shall
23 certify to the court within sixty (60) days of the entry of the order that the required
24 sealing action has been completed.
- 25 (10) After the sealing of the record, the proceedings in the matter shall not be used
26 against the defendant except for the purposes of determining the person's eligibility
27 to have his or her conviction voided under subsection (8) of this section. The court

1 and other agencies shall reply to any inquiry that no record exists on the matter. The
 2 person whose record has been sealed shall not have to disclose the fact of the record
 3 or any matter relating thereto on an application for employment, credit, or other type
 4 of application.

5 (11) Inspection of the sealed records may thereafter be permitted by the court pursuant to
 6 KRS 27A.099 or upon a motion by the person who is the subject of the records and
 7 only to those persons named in the motion or upon a motion of the prosecutor to
 8 verify a defendant's eligibility to have his or her conviction voided under subsection
 9 (8) of this section.

10 **(12) A person who has previously had a charge of possession of controlled substances**
 11 **dismissed after completion of a deferred prosecution under Section 9 of this Act**
 12 **shall not be eligible for voiding of conviction under this section.**

13 ➔ Section 9. KRS 218A.14151 is amended to read as follows:

14 (1) A defendant charged with his or her first or second offense under KRS 218A.1415
 15 may enter a deferred prosecution program subject to the following provisions:

16 (a) The defendant requests deferred prosecution in writing on an application
 17 created under KRS 27A.099, and the prosecutor agrees;

18 (b) The defendant shall not be required to plead guilty or enter an Alford plea as a
 19 condition of applying for participation in the deferred prosecution program;

20 (c) The defendant agrees to the terms and conditions set forth by the
 21 Commonwealth's attorney and approved by the court, which may include any
 22 provision authorized for pretrial diversion pursuant to KRS 533.250(1)(h) and
 23 (2); and

24 (d) The maximum length of participation in the program shall be two (2) years.

25 (2) If a prosecutor denies a defendant's request to enter a deferred prosecution program,
 26 the prosecutor shall state on the record the substantial and compelling reasons why
 27 the defendant cannot be safely and effectively supervised in the community, is not

1 amenable to community-based treatment, or poses a significant risk to public safety.

2 (3) If the defendant successfully completes the deferred prosecution program, the
 3 charges against the defendant shall be dismissed, and all records relating to the case,
 4 including but not limited to arrest records and records relating to the charges, shall
 5 be sealed, except as provided in KRS 27A.099. The offense shall be deemed never
 6 to have occurred, except for the purposes of determining the defendant's eligibility
 7 for deferred prosecution under this section or voiding of the conviction under
 8 Section 8 of this Act, and the defendant shall not be required to disclose the arrest
 9 or other information relating to the charges or participation in the program unless
 10 required to do so by state or federal law.

11 (4) If the defendant is charged with violating the conditions of the program, the court,
 12 upon motion of the Commonwealth's attorney, shall hold a hearing to determine
 13 whether the defendant violated the conditions of the program.

14 (5) If the court finds that the defendant violated the conditions of the program, the court
 15 may, with the approval of the prosecutor:

- 16 (a) Continue the defendant's participation in the program;
- 17 (b) Change the terms and conditions of the defendant's participation in the
 18 program; or
- 19 (c) Order the defendant removed from the program and proceed with ordinary
 20 prosecution for the offense charged.

21 ➔Section 10. KRS 26A.400 is amended to read as follows:

22 (1) As used in this section, unless the context otherwise requires, "drug court program"
 23 means any drug court program authorized and administered by the Kentucky
 24 Supreme Court.

25 (2) The Supreme Court of Kentucky shall administer the drug court program to:

- 26 (a) Develop standards, establish program eligibility, and provide oversight for
 27 operation for drug court programs;

- 1 (b) Define, develop, and gather outcome measures for drug court programs;
- 2 (c) Collect, report, and disseminate drug court data;
- 3 (d) Sponsor and coordinate state drug court training; and
- 4 (e) Apply for, administer, and evaluate any grant for drug court purposes~~[state~~
5 ~~drug court grants]~~.

6 (3) Nothing contained in this section shall confer a right or an expectation of a right to
7 treatment for an offender within the criminal justice system or the juvenile justice
8 system.

9 (4) If a defendant has been accepted into the drug court program and is supervised by
10 that program as a condition of probation, the defendant shall not be subject to the
11 supervision of the Division of Probation and Parole during his or her participation
12 in the drug court program.

13 ➔Section 11. KRS 27A.097 (Effective July 1, 2013) is amended to read as
14 follows:

15 (1) As used in this section, "evidence-based practices" means intervention programs
16 and supervision policies, procedures, programs, and practices that scientific
17 research demonstrates reduce instances of a defendant's failure to appear in court
18 and criminal activity among~~[pretrial]~~ defendants when implemented competently.

19 (2) In order to increase the effectiveness of supervision and intervention programs
20 funded by the state and provided to~~[pretrial]~~ defendants, the Supreme Court shall
21 require that a vendor or contractor providing supervision and intervention programs
22 for adult criminal defendants use evidence-based practices.

23 (3) The Supreme Court shall measure the effectiveness of supervision and intervention
24 programs provided by vendors or contractors and demonstrate that the programs
25 have a documented evidence base and have been evaluated for effectiveness in
26 reducing a defendant's failure to appear in court and criminal activity.

27 (4) The Supreme Court shall require, at a minimum, the following:

- 1 (a) A process for reviewing the objective criteria for evidence-based practices
 - 2 established by the vendor or contractor providing the program;
 - 3 (b) A process for auditing the effectiveness of the program;
 - 4 (c) An opportunity for programs that do not meet the criteria based on the audit
 - 5 results to improve performance; and
 - 6 (d) A mechanism to defund any program provided by a vendor or contractor that
 - 7 does not meet the criteria upon a second audit.
- 8 (5) Beginning July 1, 2012, twenty-five percent (25%) of state moneys expended on
- 9 supervision and intervention programs for pretrial defendants shall be for programs
- 10 that are in accordance with evidence-based practices. Beginning July 1, 2016, fifty
- 11 percent (50%) of state moneys expended on supervision and intervention programs
- 12 shall be for programs that are in accordance with evidence-based practices.
- 13 Beginning July 1, 2016, and thereafter, seventy-five percent (75%) of state moneys
- 14 expended on supervision and intervention programs shall be for programs that are in
- 15 accordance with evidence-based practices.

16 ➔Section 12. KRS 439.320 is amended to read as follows:

- 17 (1) The Governor shall appoint a Parole Board consisting of nine (9) full-time members
- 18 to be confirmed by the Senate in accordance with KRS 11.160. The Governor shall
- 19 make each appointment from a list of three (3) names given to him or her by the
- 20 Kentucky State Corrections Commission. Each member appointed to the board shall
- 21 have had at least five (5) years of actual experience in the field of penology,
- 22 correction work, law enforcement, sociology, law, education, social work, medicine,
- 23 or a combination thereof, or have served at least five (5) years previously on the
- 24 Parole Board. No more than six (6) board members shall be of the same political
- 25 party. The board shall be attached to the Justice and Public Safety Cabinet for
- 26 administrative purposes only. The Department of Corrections shall provide any
- 27 clerical, stenographic, administrative, and expert staff assistance the board deems

1 necessary to carry out its duties.

2 (2) The Governor shall designate one (1) member as chairperson of the board. The
3 member designated as chairperson shall serve in that capacity at the pleasure of the
4 Governor or until his or her term expires.

5 (3) The members of the board shall give full time to the duties of their office and shall
6 receive necessary traveling expenses and a salary to be determined pursuant to KRS
7 64.640(2), except the chairperson of the board shall receive additional
8 compensation of one thousand dollars (\$1,000) per year for his or her services.
9 Their terms of office shall be four (4) years and until their successors are appointed
10 and have qualified. Their successors shall be appointed thereafter as provided in this
11 section for terms of four (4) years, and a vacancy occurring before expiration of the
12 term of office shall be similarly filled for the unexpired term.

13 (4) The organization of the board shall be determined by the chairperson and shall be
14 consistent with administrative regulations promulgated pursuant to KRS 439.340.
15 For policy and procedural matters, five (5) members shall constitute a quorum.
16 Parole and final parole revocation hearings may be done by panels of the board,
17 subject to the following requirements:

18 (a) If a two (2) member panel is utilized, both members of the panel shall agree
19 on the decision or the matter shall be referred to the full board;

20 (b) If a three (3) member panel is utilized, two (2) of the three (3) members of the
21 panel shall agree on a decision or the matter shall be referred to the full board;
22 and

23 (c) If a panel of four (4) or more members is utilized, a majority of the panel shall
24 agree on a decision or the matter shall be referred to the full board.

25 (5) The Governor may not remove any member of the board except for disability,
26 inefficiency, neglect of duty, or malfeasance in office. Before removal, he or she
27 shall give the member a written copy of the charges against him or her and shall fix

1 the time when he or she can be heard in his or her defense, which shall not be less
 2 than ten (10) days thereafter. Upon removal, the Governor shall file in the office of
 3 the Secretary of State a complete statement of all charges made against the member
 4 and the findings thereupon with a record of the proceedings.

5 ~~(6) Upon the expiration of the terms of office of the two (2) full time board members~~
 6 ~~whose terms expire May 23, 1994, the Governor shall appoint two (2) full time~~
 7 ~~members to serve terms which will expire June 30, 1995. Thereafter, appointments~~
 8 ~~to these two (2) full time terms shall be for four (4) years and shall be filled as~~
 9 ~~provided for in subsection (3) of this section. The Governor may reappoint present~~
 10 ~~members if they meet the qualifications set forth in subsection (1) of this section.~~

11 ~~(7) The part time members of the board, whose terms have not expired upon July 15,~~
 12 ~~2010, shall serve until their terms expire and may participate in considering the~~
 13 ~~grant or revocation of parole at the request of the chairperson. No more than one (1)~~
 14 ~~part time Parole Board member shall serve on any panel of the board as set forth in~~
 15 ~~subsection (4) of this section. The part time Parole Board member called upon to~~
 16 ~~serve shall be paid at a per diem rate equal to the per diem rate for the salary of a~~
 17 ~~newly appointed full time member and shall receive necessary travel expenses.~~

18 ~~(8)~~ The Office of Executive Director of the Parole Board is created. The office shall be
 19 headed by an executive director who shall be appointed by and directly responsible
 20 to the secretary of the Justice and Public Safety Cabinet in matters relating to
 21 administration. The executive director shall be responsible for the support services
 22 to the Parole Board in the area of financial, personnel, and facilities management;
 23 shall provide recommendations on administrative issues affecting the board to the
 24 secretary of the Justice and Public Safety Cabinet, the chairperson of the Parole
 25 Board, and Parole Board members; shall review and draft legislation and
 26 promulgate administrative regulations for the board; and shall review parole data
 27 and conduct long-range planning as relevant to the planning needs of the board.

1 ➔Section 13. KRS 439.335 is amended to read as follows:

2 (1) In considering the granting of parole and the terms of parole, the parole board shall
3 use the results from an inmate's validated risk and needs assessment and any other
4 scientific means for personality analysis that may hereafter be developed.

5 (2) The department shall use the results from an inmate's validated risk and needs
6 assessment and any other scientific means for personality analysis that may
7 hereafter be developed~~[,]~~ to define the level or~~[terms and]~~ intensity of supervision
8 for parole, and to establish any terms or conditions of supervision imposed by the
9 department in accordance with the administrative regulations adopted by the
10 department pursuant to KRS 439.470 or as otherwise authorized by law~~[before~~
11 ~~granting parole]~~. The terms and intensity of supervision shall be based on an
12 individual's level of risk to public safety, criminal risk factors, and the need for
13 treatment and other interventions.

14 ➔Section 14. KRS 439.3406 is amended to read as follows:

15 (1) The board shall order mandatory reentry supervision~~[and the terms of supervision,~~
16 ~~which may include electronic monitoring,]~~ for an inmate who has not been granted
17 discretionary parole six (6) months prior to the inmate's minimum expiration of
18 sentence.

19 (2) The provisions of subsection (1) of this section shall not apply to an inmate who:

- 20 (a) Is not eligible for parole by statute;
- 21 (b) Has been convicted of a capital offense or a Class A felony;
- 22 (c) Has a maximum or close security classification as defined by administrative
- 23 regulations promulgated by the department;
- 24 (d) Has been sentenced to two (2) years or less of incarceration;
- 25 (e) Is subject to the provisions of KRS 532.043; or
- 26 (f) Has six (6) months or less to be served after his or her sentencing by a court or
- 27 recommitment to prison for a violation of probation, shock probation, parole,

1 or conditional discharge.

2 (3) An inmate granted mandatory reentry supervision pursuant to this section may be
3 returned by the board to prison for violation of the conditions of supervision and
4 shall not again be eligible for mandatory reentry supervision during the same period
5 of incarceration.

6 (4) An inmate released to mandatory reentry supervision shall be considered to be
7 released on parole.

8 (5) Mandatory reentry supervision is not a commutation of sentence or any other form
9 of clemency.

10 (6) No hearing shall be required for the board to order an inmate to mandatory
11 reentry supervision pursuant to subsection (1) of this section. Terms of
12 supervision for inmates released on mandatory reentry supervision shall be
13 established as follows:

14 (a) The board shall adopt administrative regulations establishing general
15 conditions applicable to each inmate ordered to mandatory reentry
16 supervision pursuant to subsection (1) of this section. If an inmate is
17 ordered to mandatory reentry supervision, the board's order shall set forth
18 the general conditions and shall require the inmate to comply with the
19 general conditions and any requirements imposed by the department in
20 accordance with this section;

21 (b) Upon intake of an inmate ordered to mandatory reentry supervision by the
22 board, the department shall use the results of the risk and needs assessment
23 administered pursuant to KRS 439.3104(1) to establish appropriate terms
24 and conditions of supervision, taking into consideration the level of risk to
25 public safety, criminal risk factors, and the need for treatment and other
26 interventions. The terms and conditions imposed by the department under
27 this paragraph shall not conflict with the general conditions adopted by the

1 board pursuant to paragraph (a) of this subsection; and
 2 (c) The powers and duties assigned to the commissioner in relation to
 3 probation or parole under KRS 439.470 shall be assigned to the
 4 commissioner in relation to mandatory reentry supervision~~[The board shall~~
 5 ~~consider an inmate's risk and needs assessment results when setting the terms~~
 6 ~~and conditions of mandatory reentry supervision].~~

7 (7) Subject to subsection (3) of this section, the period of mandatory reentry
 8 supervision shall conclude upon completion of the individual's minimum expiration
 9 of sentence.

10 (8) If the board issues a warrant for the arrest of an inmate for absconding from
 11 supervision during the mandatory reentry supervision period, and the inmate is
 12 subsequently returned to prison as a violator of conditions of supervision for
 13 absconding, the inmate shall not receive credit toward the remainder of his or her
 14 sentence for the time spent absconding.

15 (9) The department shall report the results of the mandatory reentry supervision
 16 program to the Interim Joint Committee on Judiciary by February 1, 2015.

17 ➔ Section 15. KRS 441.420 is amended to read as follows:

18 (1) No political subdivision of this Commonwealth, combination of subdivisions, or
 19 regional jail authority shall build a new local correctional facility unless:

20 (a) The facility meets the approval or complies with the standards and
 21 administrative regulations of the department promulgated pursuant to KRS
 22 441.055;

23 (b) The construction results in a new facility with:

24 1. A minimum capacity of one hundred fifty (150) prisoner beds; or

25 2. If a larger facility is needed, more than one hundred fifty (150)
 26 prisoner beds in fifty (50) bed increments; and

27 (c) Construction of the local correctional facility is approved by the construction

1 authority.

2 (2) Final authority for approval of plans for the construction of a local correctional
3 facility, or an addition to a local correctional facility shall rest with the construction
4 authority.

5 (3) The department shall pay the design fees for architectural and engineering
6 services associated with any new local correctional facility approved by the
7 construction authority~~[provide at no cost to a county, counties, or regional jail~~
8 ~~authority standard local correctional facility plans for the construction of local~~
9 ~~correctional facilities of one hundred (100), three hundred (300), and five hundred~~
10 ~~(500) bed capacity. The department shall provide plans for larger local correctional~~
11 ~~facilities in five hundred (500) bed increments at no cost to a regional jail authority,~~
12 ~~county, or counties].~~

13 (4) The department may promulgate administrative regulations to create a fee
14 schedule for architectural plans and architectural and engineering services
15 required for the construction of local correctional facilities. A sample fee
16 schedule for architectural plans and architectural and engineering services may
17 be developed by a committee consisting of department personnel, architects, and
18 construction managers.

19 ➔Section 16. KRS 441.430 is amended to read as follows:

20 (1) Any political subdivision, or combination of subdivisions, desiring to build a local
21 correctional facility shall make application, in writing, to the department and the
22 construction authority for approval of the plans for the local correctional facility not
23 less than ninety (90) days before the advertising for bids for construction of the
24 facility, or if bids are not to be let, ninety (90) days before the construction
25 commences.

26 (2) The department's jail consultants shall review the plans and within thirty (30) days
27 of the department's receipt of the application, make a recommendation to the

1 construction authority as to whether the plans should be approved. The construction
 2 authority shall make a decision within sixty (60) days after the department's jail
 3 consultants make their recommendation. The construction authority may delay a
 4 final decision on the construction of any new local correctional facility if the
 5 construction authority determines that it has insufficient information upon which to
 6 base a decision. If the construction authority determines that it has insufficient
 7 information upon which to base a decision, a final decision shall be delayed but
 8 shall be made within sixty (60) days after receipt of the information required by the
 9 construction authority. Construction shall not commence until the requisite approval
 10 is obtained.

11 (3) ~~[The construction authority shall not approve the construction of a new local~~
 12 ~~correctional facility unless the proposed local correctional facility is built using~~
 13 ~~plans supplied by the department. All local correctional facilities of the same inmate~~
 14 ~~bed capacity shall be built using the same set of plans, which shall be suited to the~~
 15 ~~type of facility being constructed pursuant to KRS 441.420.~~

16 (4) ~~]~~The construction authority shall not approve the construction of a local correctional
 17 facility unless the political subdivision or combination of subdivisions desiring to
 18 build a local correctional facility proves to the satisfaction of the construction
 19 authority that:

- 20 (a) The construction of a new local correctional facility is necessary;
- 21 (b) The construction of a new local correctional facility with the number of beds
 22 proposed is necessary;
- 23 (c) The political subdivision or combination of political subdivisions has
 24 sufficient bonding and revenue sources to pay the bonded indebtedness of the
 25 proposed local correctional facility;
- 26 (d) The number and sources of prisoners for the local correctional facility is
 27 sufficient to maintain the financial viability of the local correctional facility;

- 1 (e) The projected operating costs for the local correctional facility are appropriate
- 2 to maintain the financial viability of the local correctional facility;
- 3 (f) The sources of revenue are sufficient to pay, in addition to the bonded
- 4 indebtedness, the operation costs and maintenance for the local correctional
- 5 facility;
- 6 (g) If applicable, there are contracts or interlocal cooperation agreements
- 7 specifying details for sharing the liability for the costs of paying the bonded
- 8 indebtedness and the operation costs for the local correctional facility;
- 9 (h) If applicable, there are contracts or interlocal cooperation agreements
- 10 specifying details for the management and operation of the local correctional
- 11 facility; and
- 12 (i) All information has been provided that the construction authority required
- 13 pursuant to administrative regulation.

14 ➔Section 17. KRS 441.440 is amended to read as follows:

15 Except as provided in KRS 441.450, ~~[all construction of]~~ local correctional facilities **shall**
 16 **be constructed** pursuant to **the** approved plans, ~~[shall be done as provided under these~~
 17 ~~plans]~~ and no alterations to the plans or construction shall be made unless prior approval
 18 is obtained from the construction authority upon recommendation of the department's jail
 19 consultants.

20 ➔Section 18. KRS 441.450 is amended to read as follows:

- 21 (1) Any political subdivision, combination of subdivisions, or regional jail authority
- 22 desiring to remodel or reconstruct an existing local correctional facility wherein the
- 23 construction will involve physical change of the structure shall obtain the ~~[requisite]~~
- 24 approvals required by KRS 441.420 to 441.440 and shall reconstruct or modify the ~~[~~
- 25 ~~said]~~ local correctional facility in accordance with the approval.
- 26 (2) Except as provided in subsection (3) of this section, existing local correctional
- 27 facilities may be renovated without the approval of the construction authority. ~~[~~

1 However, if the renovation includes an increase in the number of square footage of
 2 the local correctional facility to add prisoner bed space, that renovation shall be
 3 deemed an expansion which shall require the approval of the construction authority
 4 as provided in KRS 441.420 to 441.450.]

5 (3) (a) If the renovation includes an increase in the square footage of an existing
 6 local correctional facility to add prisoner bed space, that renovation shall be
 7 deemed an expansion and shall require the approval of the construction
 8 authority as provided in KRS 441.420 to 441.450.

9 (b) If the renovation includes an increase in the square footage of [When an
 10 application is made to the construction authority to renovate] an existing local
 11 correctional facility [by increasing the number of square feet in the local
 12 correctional facility], the authority shall not approve the application unless the
 13 resulting renovation of the local correctional facility results in a facility with a
 14 bed capacity of one hundred fifty (150) [(100)] inmate beds or more.

15 ➔ Section 19. KRS 532.080 is amended to read as follows:

16 (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the
 17 sentence of imprisonment assessed under KRS 532.060 for the crime of which such
 18 person presently stands convicted, shall fix a sentence of imprisonment as
 19 authorized by subsection (5) or (6) of this section. When a defendant is charged
 20 with being a persistent felony offender, the determination of whether or not he is
 21 such an offender and the punishment to be imposed pursuant to subsection (5) or (6)
 22 of this section shall be determined in a separate proceeding from that proceeding
 23 which resulted in his last conviction. Such proceeding shall be conducted before the
 24 court sitting with the jury that found the defendant guilty of his most recent offense
 25 unless the court for good cause discharges that jury and impanels a new jury for that
 26 purpose.

27 (2) A persistent felony offender in the second degree is a person who is more than

1 twenty-one (21) years of age and who stands convicted of a felony after having been
2 convicted of one (1) previous felony. As used in this provision, a previous felony
3 conviction is a conviction of a felony in this state or conviction of a crime in any
4 other jurisdiction provided:

5 (a) That a sentence to a term of imprisonment of one (1) year or more or a
6 sentence to death was imposed therefor; and

7 (b) That the offender was over the age of eighteen (18) years at the time the
8 offense was committed; and

9 (c) That the offender:

10 1. Completed service of the sentence imposed on the previous felony
11 conviction within five (5) years prior to the date of commission of the
12 felony for which he now stands convicted; or

13 2. Was on probation, parole, postincarceration supervision, conditional
14 discharge, conditional release, furlough, appeal bond, or any other form
15 of legal release from any of the previous felony convictions at the time
16 of commission of the felony for which he now stands convicted; or

17 3. Was discharged from probation, parole, postincarceration supervision,
18 conditional discharge, conditional release, or any other form of legal
19 release on any of the previous felony convictions within five (5) years
20 prior to the date of commission of the felony for which he now stands
21 convicted; or

22 4. Was in custody from the previous felony conviction at the time of
23 commission of the felony for which he now stands convicted; or

24 5. Had escaped from custody while serving any of the previous felony
25 convictions at the time of commission of the felony for which he now
26 stands convicted.

27 (3) A persistent felony offender in the first degree is a person who is more than twenty-

1 one (21) years of age and who stands convicted of a felony after having been
2 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against
3 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more
4 felonies. As used in this provision, a previous felony conviction is a conviction of a
5 felony in this state or conviction of a crime in any other jurisdiction provided:

6 (a) That a sentence to a term of imprisonment of one (1) year or more or a
7 sentence to death was imposed therefor; and

8 (b) That the offender was over the age of eighteen (18) years at the time the
9 offense was committed; and

10 (c) That the offender:

11 1. Completed service of the sentence imposed on any of the previous
12 felony convictions within five (5) years prior to the date of the
13 commission of the felony for which he now stands convicted; or

14 2. Was on probation, parole, postincarceration supervision, conditional
15 discharge, conditional release, furlough, appeal bond, or any other form
16 of legal release from any of the previous felony convictions at the time
17 of commission of the felony for which he now stands convicted; or

18 3. Was discharged from probation, parole, postincarceration supervision,
19 conditional discharge, conditional release, or any other form of legal
20 release on any of the previous felony convictions within five (5) years
21 prior to the date of commission of the felony for which he now stands
22 convicted; or

23 4. Was in custody from the previous felony conviction at the time of
24 commission of the felony for which he now stands convicted; or

25 5. Had escaped from custody while serving any of the previous felony
26 convictions at the time of commission of the felony for which he now
27 stands convicted.

- 1 (4) For the purpose of determining whether a person has two (2) or more previous
2 felony convictions, two (2) or more convictions of crime for which that person
3 served concurrent or uninterrupted consecutive terms of imprisonment shall be
4 deemed to be only one (1) conviction, unless one (1) of the convictions was for an
5 offense committed while that person was imprisoned.
- 6 (5) A person who is found to be a persistent felony offender in the second degree shall
7 be sentenced to an indeterminate term of imprisonment pursuant to the sentencing
8 provisions of KRS 532.060(2) for the next highest degree than the offense for which
9 convicted. A person who is found to be a persistent felony offender in the second
10 degree shall not be eligible for probation, shock probation, or conditional discharge,
11 unless all offenses for which the person stands convicted are Class D felony
12 offenses which do not involve a violent act against a person, in which case
13 probation, shock probation, or conditional discharge may be granted. A violent
14 offender who is found to be a persistent felony offender in the second degree shall
15 not be eligible for parole except as provided in KRS 439.3401.
- 16 (6) A person who is found to be a persistent felony offender in the first degree shall be
17 sentenced to imprisonment as follows:
- 18 (a) If the offense for which he presently stands convicted is a Class A or Class B
19 felony, or if the person was previously convicted of one (1) or more sex
20 crimes committed against a minor as defined in KRS 17.500 and presently
21 stands convicted of a subsequent sex crime, a persistent felony offender in the
22 first degree shall be sentenced to an indeterminate term of imprisonment, the
23 maximum of which shall not be less than twenty (20) years nor more than fifty
24 (50) years, or life imprisonment, or life imprisonment without parole for
25 twenty-five (25) years for a sex crime committed against a minor;
- 26 (b) If the offense for which he presently stands convicted is a Class C or Class D
27 felony, a persistent felony offender in the first degree shall be sentenced to an

1 indeterminate term of imprisonment, the maximum of which shall not be less
 2 than ten (10) years nor more than twenty (20) years.

3 (7) A person who is found to be a persistent felony offender in the first degree shall not
 4 be eligible for probation, shock probation, or conditional discharge, unless all
 5 offenses for which the person stands convicted are Class D felony offenses which
 6 do not involve a violent act against a person or a sex crime as that term is defined in
 7 KRS 17.500, in which case, probation, shock probation, or conditional discharge
 8 may be granted. If the offense the person presently stands convicted of is a Class A,
 9 B, or C felony, the person shall not be eligible for parole until the person has served
 10 a minimum term of incarceration of not less than ten (10) years, unless another
 11 sentencing scheme applies. A violent offender who is found to be a persistent felony
 12 offender in the first degree shall not be eligible for parole except as provided in
 13 KRS 439.3401.

14 (8) ~~[(a) No conviction, plea of guilty, or Alford plea to a violation of KRS 218A.500~~
 15 ~~shall bring a defendant within the purview of or be used as a conviction~~
 16 ~~eligible for making a person a persistent felony offender under this section.~~

17 (b) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not
 18 trigger the application of this section, regardless of the number or type of prior
 19 felony convictions that may have been entered against the defendant. A
 20 conviction, plea of guilty, or Alford plea under KRS 218A.1415 may be used
 21 as a prior felony offense allowing this section to be applied if he or she is
 22 subsequently convicted of a different felony offense.

23 (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be
 24 retroactive.

25 (10) (a) Except as provided in paragraph (b) of this subsection, this section shall not
 26 apply to a person convicted of a criminal offense if the penalty for that offense
 27 was increased from a misdemeanor to a felony, or from a lower felony

1 classification to a higher felony classification, because the conviction
 2 constituted a second or subsequent violation of that offense.

3 (b) This subsection shall not prohibit the application of this section to a person
 4 convicted of:

5 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,
 6 508.032, 508.140, or 510.015; or

7 2. Any other felony offense if the penalty was not enhanced to a higher
 8 level because the Commonwealth elected to prosecute the person as a
 9 first-time violator of that offense.

10 ➔Section 20. KRS 196.111 is amended to read as follows:

11 (1) As used in this section, "evidence-based practices" means supervision policies,
 12 procedures, treatment and intervention programs, and practices that scientific
 13 research demonstrates reduce recidivism among inmates and individuals on
 14 probation, parole, or other form of post-release supervision when implemented
 15 competently.

16 (2) In order to increase the effectiveness of treatment and intervention programs funded
 17 by the state and provided by the department for inmates, probationers, and parolees,
 18 the department shall require that such programs use evidence-based practices.

19 (3) The department shall measure the effectiveness of each treatment and intervention
 20 program and demonstrate that the program has a documented evidence base and has
 21 been evaluated for effectiveness in reducing recidivism.

22 (4) The department shall promulgate administrative regulations to provide, at a
 23 minimum:

24 (a) A process for reviewing the objective criteria for evidence-based practices
 25 established by the agency providing the program;

26 (b) A process for auditing the effectiveness of the program;

27 (c) An opportunity for programs that do not meet the criteria based on the audit

1 results to improve performance; and

2 (d) A mechanism to defund any program that does not meet the criteria upon a
3 second audit.

4 (5) Beginning July 1, 2012, twenty-five percent (25%) of state moneys expended on
5 programs shall be for programs that are in accordance with evidence-based
6 practices. Beginning July 1, 2014, fifty percent (50%) of state moneys expended on
7 programs shall be for programs that are in accordance with evidence-based
8 practices. Beginning July 1, 2016, and thereafter, seventy-five percent (75%) of
9 state moneys expended on programs shall be for programs that are in accordance
10 with evidence-based practices.

11 (6) By fiscal year 2016-2017~~[2015-2016]~~, the department shall eliminate supervision
12 policies, procedures, programs, and practices intended to reduce recidivism that
13 scientific research demonstrates do not reduce recidivism. However, the department
14 may utilize a new supervision policy, procedure, program, or practice if the
15 department determines that the new supervision policy, procedure, program, or
16 practice has the potential for qualifying as an evidence-based practice after more
17 scientific research is conducted.

18 ➔Section 21. KRS 6.949 is amended to read as follows:

19 (1) Any bill, amendment, or committee substitute that creates a new crime, increases
20 the penalty for an existing crime, decreases the penalty for an existing crime,
21 changes the elements of the offense for an existing crime, repeals an existing crime,
22 or proposes to increase, decrease, or otherwise impact incarceration shall be
23 identified by the staff of the Legislative Research Commission~~[the drafter]~~ as
24 having a corrections impact on a "Corrections Impact Statement" form specified by
25 the Legislative Research Commission.

26 (2) ~~[Any bill, amendment, or committee substitute which permits a state agency to do~~
27 ~~any of the acts specified in subsection (1) of this section, even if the action is termed~~

1 ~~a regulatory offense by administrative regulation, shall be identified by the drafter~~
 2 ~~as having a corrections impact in the manner specified in subsection (1) of this~~
 3 ~~section.~~

4 ~~(3) Any bill, amendment, or committee substitute that permits a city, county, urban-~~
 5 ~~county, charter county, consolidated local government, special district, or any other~~
 6 ~~subdivision of local government to do any of the acts specified in subsection (1) of~~
 7 ~~this section by ordinance or any other form of action shall be identified by the~~
 8 ~~drafter as having a corrections impact in the manner specified in subsection (1) of~~
 9 ~~this section.~~

10 ~~(4)~~ ~~If a~~ ~~[The drafter of any]~~ bill, amendment, or committee substitute is identified as
 11 having a corrections impact under subsection ~~[subsections]~~ (1) ~~[to (3)]~~ of this
 12 section, the staff of the Legislative Research Commission shall notify the sponsor
 13 of the bill, amendment, or committee substitute that a corrections impact is
 14 required.

15 ~~(3)~~ ~~(5)~~ If a bill, amendment, or committee substitute is identified as having a
 16 corrections impact, a "Corrections Impact Statement" shall be prepared by the staff
 17 of the Department of Corrections with the assistance of the Department of Kentucky
 18 State Police, Administrative Office of the Courts, Parole Board, and other persons,
 19 agencies, or organizations deemed necessary by the Department of Corrections staff
 20 assigned to prepare the corrections impact statement. The Department of Kentucky
 21 State Police, Administrative Office of the Courts, Parole Board, and other persons,
 22 agencies, and organizations that have been requested to provide information for the
 23 corrections impact statement shall do so within the period of time specified by the
 24 Department of Corrections staff person requesting the information, which in no case
 25 shall exceed two (2) business days unless an extension is granted by the requesting
 26 staff person.

27 ~~(4)~~ ~~(6)~~ The corrections impact statement shall contain the estimated costs, estimated

1 savings, and necessary appropriations based upon:

- 2 (a) Incarceration in jail prior to trial and during trial based on the available
- 3 information about persons granted bail or other form of pretrial release and the
- 4 length of time spent in jail prior to release;
- 5 (b) Supervision of a person who has been granted bail or pretrial release based on
- 6 the average time spent between the time of release until the time of trial for
- 7 the offense;
- 8 (c) Incarceration in jail for a misdemeanor following conviction based on the
- 9 maximum time of incarceration authorized for the offense;
- 10 (d) Incarceration in a state correctional facility for a capital offense, or felony
- 11 offense based on the maximum and minimum length of incarceration
- 12 authorized for the offense, except for offenses in which incarceration in a
- 13 county jail for a Class D felony is required;
- 14 (e) Incarceration in a county jail for a Class D felony for which incarceration in a
- 15 county jail is authorized based on the maximum and minimum sentence of
- 16 incarceration authorized for a Class D felony;
- 17 (f) Probation or conditional discharge supervision based on the maximum time of
- 18 probation or conditional discharge authorized for the offense;
- 19 (g) Parole supervision based on the average length of parole supervision
- 20 authorized for the offense assuming full parole supervision; and
- 21 (h) Mandated treatment, education, and other programs which are to be paid by
- 22 the state, unit of local government, or public agency based on the number of
- 23 persons anticipated to be required to complete the program if the education,
- 24 treatment, or other program is not normally offered as a part of a defendant's
- 25 incarceration and is required to be completed outside of a correctional facility.

26 ~~(5)~~~~(7)~~ Insofar as possible, costs and savings for a change to an existing crime shall
 27 be calculated using:

- 1 (a) Arrest data for the crime from the Department of Kentucky State Police;
- 2 (b) Pretrial incarceration data from the Administrative Office of the Courts;
- 3 (c) Preconviction jail data from the Administrative Office of the Courts;
- 4 (d) Conviction data from the Administrative Office of the Courts;
- 5 (e) Postconviction jail and imprisonment data from the Department of
- 6 Corrections;
- 7 (f) Probation and parole data from the Department of Corrections; and
- 8 (g) Data from applicable agencies or organizations providing treatment,
- 9 education, or other mandated programs.
- 10 ~~(6)~~~~(8)~~ Insofar as possible, costs or savings for a new crime shall be calculated in the
- 11 same manner as specified in subsection ~~(5)~~~~(7)~~ of this section using data for similar
- 12 crimes unless that is determined by the Department of Corrections staff person to be
- 13 impractical or impossible in which case the estimate for a new crime may be
- 14 prepared using:
- 15 (a) The maximum and minimum length of incarceration for the offense;
- 16 (b) An estimate of cost based on ten (10) persons being charged with the offense,
- 17 and based on one hundred (100) persons being charged with the offense;
- 18 (c) An estimate of cost based on ten (10) persons and one hundred (100) persons
- 19 being convicted of the offense and sent to jail if the offense is a misdemeanor
- 20 using the criteria specified in subsection ~~(7)~~~~(9)~~ of this section; and
- 21 (d) An estimate of cost based on ten (10) persons and one hundred (100) persons
- 22 being convicted of a felony offense requiring imprisonment in a state-operated
- 23 correctional facility unless the offense is a Class D felony for which
- 24 imprisonment in a county jail is required in which case the cost shall be based
- 25 on the amount paid by the Department of Corrections for a person
- 26 incarcerated in a county jail for a Class D felony.
- 27 ~~(7)~~~~(9)~~ Costs or savings shall be based on the average costs actually paid by the

1 Department of Corrections during the previous fiscal year for incarceration of a
 2 person in a state correctional facility, the average cost for supervision of a person
 3 placed on probation without electronic monitoring, the average cost of a person
 4 placed on probation with electronic monitoring, the average cost of parole
 5 supervision without electronic monitoring, and the average cost of parole
 6 supervision with electronic monitoring.

7 ~~[(10) The sponsor of any bill or amendment or sponsor of a proposed committee~~
 8 ~~substitute adopted by a committee that is identified as having a corrections impact~~
 9 ~~shall identify in writing where the funds to pay for additional costs of the proposal~~
 10 ~~will come from either by reducing other expenditures, additional revenues, or~~
 11 ~~otherwise. The sponsor's statement shall be included with the corrections impact.]~~

12 (8)~~[(11)]~~ If an amendment to a bill is combined into a committee substitute or a GA
 13 version of the bill is created incorporating a floor amendment, a new corrections
 14 impact statement shall be prepared combining the information in the original bill as
 15 modified by the amendment.

16 ~~[(12) A bill, amendment, or committee substitute shall not be considered for final passage~~
 17 ~~unless the corrections impact and latest revised corrections impact, if required, has~~
 18 ~~been made available to the members of the House of Representatives or the Senate,~~
 19 ~~as appropriate, on the day prior to the day the bill, amendment, or committee~~
 20 ~~substitute is to be voted on for final passage.]~~

21 ➔Section 22. The Criminal Justice Council shall oversee the implementation of
 22 the provisions in the Public Safety and Offender Accountability Act, 2011 Ky. Acts ch. 2,
 23 and coordinate efforts among the various stakeholders within the criminal justice system
 24 to prepare a comprehensive state plan to provide for the full and proper implementation
 25 of the provisions in that Act. By October 1 of each year, beginning in 2012, the Criminal
 26 Justice Council shall submit to the Interim Joint Committees on Judiciary a
 27 comprehensive report on the implementation of the Public Safety and Offender

1 Accountability Act's provisions within the various elements of the criminal justice system
2 and make recommendations that will further advance the policies within that Act.

3 ➔Section 23. KRS 202A.410 is amended to read as follows:

- 4 (1) When a patient who has been involuntarily committed to a psychiatric facility or
5 forensic psychiatric facility and who has been charged with or convicted of a violent
6 crime as defined in KRS 439.3401 is discharged or transferred from the facility, the
7 administrator shall notify the law enforcement agency in the county to which the
8 person is to be released, the prosecutor in the county where the violent crime was
9 committed, and the Department of Corrections.
- 10 (2) If a patient who has been involuntarily committed to a psychiatric facility or
11 forensic psychiatric facility and who has been charged with or convicted of a violent
12 crime as defined in KRS 439.3401 escapes from the facility, the administrator shall
13 notify the law enforcement agency in the county in which the facility is located, the
14 prosecutor in the county where the violent crime was committed, and the
15 Department of Corrections.
- 16 (3) The administrator of a psychiatric facility or forensic psychiatric facility, or the
17 administrator's designee, who acts in good faith in making the notifications required
18 in this section or is unable to provide the release information required, is immune
19 from any civil liability.
- 20 (4) The Department of Corrections shall notify, or contract with a private entity to
21 notify, victims of crime, *judges, and witnesses involved in the hearing that*
22 *resulted in the involuntary commitment* who have made a notification request of
23 the discharge or escape of a patient from a psychiatric facility or forensic psychiatric
24 facility.
- 25 (5) The Department of Corrections and the Cabinet for Health and Family Services
26 shall each promulgate administrative regulations under KRS Chapter 13A to carry
27 out the duties set forth in this statute.

1 ➔ SECTION 24. A NEW SECTION OF KRS 532.200 TO 532.250 IS CREATED
2 TO READ AS FOLLOWS:

3 (1) Time spent in pretrial home incarceration pursuant to KRS 431.517 shall be
4 credited against the maximum term of imprisonment assessed to the defendant
5 upon conviction. Time credited under this section shall be calculated in
6 accordance with Section 25 of this Act.

7 (2) Violation of the terms of pretrial home incarceration shall be deemed an
8 interruption of the defendant's home incarceration. The interruption shall begin
9 at the time of the violation and shall continue until a court revokes home
10 incarceration or otherwise acts on the violation. Time spent in pretrial home
11 incarceration prior to the violation shall be credited against the maximum term
12 of imprisonment assessed to the defendant upon conviction for the original
13 charge.

14 (3) This section shall apply to defendants sentenced on or after the effective date of
15 this Act.

16 ➔ Section 25. KRS 532.120 is amended to read as follows:

17 (1) An indeterminate sentence of imprisonment commences when the prisoner is
18 received in an institution under the jurisdiction of the Department of Corrections.
19 When a person is under more than one (1) indeterminate sentence, the sentences
20 shall be calculated as follows:

21 (a) If the sentences run concurrently, the maximum terms merge in and are
22 satisfied by discharge of the term which has the longest unexpired time to run;
23 or

24 (b) If the sentences run consecutively, the maximum terms are added to arrive at
25 an aggregate maximum term equal to the sum of all the maximum terms.

26 (2) A definite sentence of imprisonment commences when the prisoner is received in
27 the institution named in the commitment. When a person is under more than one (1)

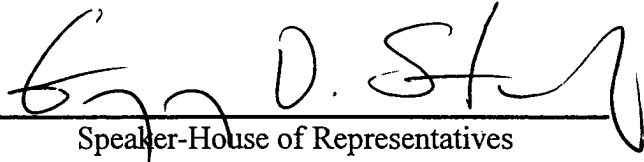
- 1 definite sentence, the sentences shall be calculated as follows:
- 2 (a) If the sentences run concurrently, the terms merge in and are satisfied by
3 discharge of the term which has the longest unexpired time to run; or
- 4 (b) If the sentences run consecutively, the terms are added to arrive at an
5 aggregate term and are satisfied by discharge of the aggregate term.
- 6 (3) Time spent in custody prior to the commencement of a sentence as a result of the
7 charge that culminated in the sentence shall be credited by the Department of
8 Corrections toward service of the maximum term of imprisonment in cases
9 involving a felony sentence and by the sentencing court in all other cases. If the
10 sentence is to an indeterminate term of imprisonment, the time spent in custody
11 prior to the commencement of the sentence shall be considered for all purposes as
12 time served in prison.
- 13 (4) If a person has been in custody due to a charge that culminated in a dismissal,
14 acquittal, or other disposition not amounting to a conviction, the amount of time
15 that would have been credited under subsection (3) of this section if the defendant
16 had been convicted of that charge shall be credited as provided in subsection (3) of
17 this section against any sentence based on a charge for which a warrant or
18 commitment was lodged during the pendency of that custody.
- 19 (5) If a person serving a sentence of imprisonment escapes from custody, the escape
20 shall interrupt the sentence. The interruption shall continue until the person is
21 returned to the institution from which he escaped or to an institution administered
22 by the Department of Corrections. Time spent in actual custody prior to return under
23 this subsection shall be credited against the sentence if custody rested solely on an
24 arrest or surrender for the escape itself.
- 25 (6) As used in subsections (3) and (4) of this section, time spent in custody shall
26 include time spent in the intensive secured substance abuse recovery program
27 developed under KRS 196.285 and may include, at the discretion of the sentencing

1 court, time spent in a different residential substance abuse treatment or recovery
 2 facility pursuant to KRS 431.518 or 533.251, if under each option allowed by this
 3 subsection, the person has successfully completed the program offered by the
 4 intensive secured substance abuse recovery program or the residential substance
 5 abuse treatment or recovery facility. If the defendant fails to complete a program,
 6 the court may still award full or partial sentence credit if the defendant demonstrates
 7 that good cause existed for the failure to complete the program.

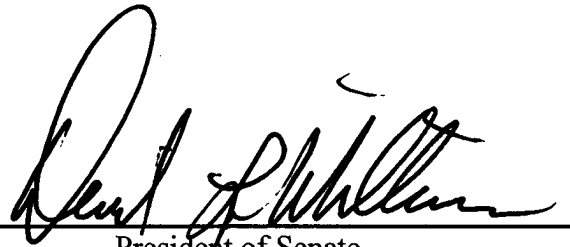
8 (7) As used in subsections (3) and (4) of this section, time spent in custody shall
 9 include time spent in pretrial home incarceration pursuant to KRS 431.517,
 10 subject to the conditions imposed by Section 24 of this Act.

11 (8) In lieu of an award by the Department of Corrections in felony cases, if a
 12 presentence report indicates that a defendant has accumulated sufficient sentencing
 13 credits under this section to allow for an immediate discharge from confinement
 14 upon pronouncement of sentence, the court may confirm the amount of the credit
 15 and award the credit at pronouncement.

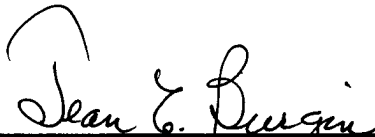
16 (9){(8)} An inmate may challenge a failure of the Department of Corrections to award
 17 a sentencing credit under this section or the amount of credit awarded by motion
 18 made in the sentencing court no later than thirty (30) days after the inmate has
 19 exhausted his or her administrative remedies.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 4-23-12